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Amendment and Response

Serial No.: 10/717,788

Confirmation No.: 8585

Filed: November 20, 2003

For: WASTE CONTAINER STABILIZERRemarks

The Office Action mailed October 19, 2004 has been received and reviewed. Claims 1-14 and 16-20 remain pending with claim 15 having been withdrawn in view of Applicant's election. Reconsideration and withdrawal of the rejections are respectfully requested.

Affirmation of Provisional Election

The Examiner issued a Restriction Requirement under 35 U.S.C. 121 in the above-identified application, grouping the claims as follows: Group I, Claims 1-14 and 16-20, drawn to a waste container stabilizer (and a waste container); and Group II, Claim 15, drawn to a waste container stabilizer and a pallet. A provisional election to prosecute claims 1-14 and 16-20, Group I, was made in response to a telephone conversation with the Examiner on October 12, 2004. The provisional election to prosecute Group I is herein affirmed without traverse.

Amendment to the Specification

Applicant has amended the Abstract as suggested by the Examiner. Consideration and entry of the amendment are respectfully requested.

The 35 U.S.C. §103 Rejection

Claims 1-14 and 16-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0144901 to Nauseda et al. in view of U.S. Patent No. 4,411,085 to Farmer and U.S. Patent No. 3,648,659 to Jones. Applicant respectfully traverses this rejection.

Applicant respectfully submits that a *prima facie* case of obviousness has not been established because the primary reference (Nauseda et al.) is not prior art to the present application. Nauseda et al. has a publication date of July 29, 2004, a filing date of December 19, 2003, and claims priority to a provisional application (Serial No. 60/442,711) filed on January 27, 2003.

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The present application was filed on November 20, 2003 (before the filing and publication dates of Nauseda et al.) and, as acknowledged in the Office Action, claims priority under 35 U.S.C. § 119(e) to a provisional application (Serial No. 60/428,028) filed on November 21, 2002. In other words, the present application has an effective filing date of November 21, 2002 which is over three months before the earliest possible filing date of Nauseda et al. As a result, Applicant respectfully submits that Nauseda et al. is not prior art to the present application.

In view of the above, Applicant defers addressing the assertions regarding the teachings of the cited references, although Applicant does reserve the right to dispute the assertions in the event this rejection is maintained.

For at least the above reasons, Applicant respectfully submits that a *prima facie* case of obviousness based on Nauseda et al. in view of Farmer and Jones has not been established. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

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Summary

It is respectfully submitted that the pending claims 1-14 and 16-20 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for

William P. Reiter

By
Mueting, Raasch & Gebhardt, P.A.
P.O. Box 581415
Minneapolis, MN 55458-1415
Phone: (612) 305-1220
Facsimile: (612) 305-1228
Customer Number 26813

19 JAN. 2005

Date

By: KWRe
Kevin W. Raasch
Reg. No. 35,651
Direct Dial (612) 305-1218

CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 19th day of JANUARY, 2005, at 2:35 p.m. (Central Time).

By: Rachel C. England-Robin
Name: Rachel England-Robin